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17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**  
19 **OAKLAND DIVISION**

20 EPIC GAMES, INC.

Case No. 4:20-cv-05640-YGR-TSH

21 Plaintiff, Counter-defendant  
22 v.

**APPLE INC.'S STATEMENT IN SUPPORT  
OF ADMINISTRATIVE MOTION TO SEAL**

23 APPLE INC.,

The Honorable Thomas S. Hixson

24 Defendant, Counterclaimant

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Pursuant to Federal Rule of Civil Procedure 26(c) and Local Rule 79-5, Apple Inc. (“Apple”) submits this statement in support of Epic Games, Inc.’s Administrative Motion to Consider Whether Another Party’s Material Should Be Sealed Pursuant to Civil Local Rule 79-5 (Dkt. 1135) (“Epic’s Motion”). Apple respectfully requests that the Court seal Exhibits C–G to Epic’s Motion in their entirety and that the Court seal portions of the privilege log entries submitted as Exhibit H to Epic’s Motion. These exhibits contain information sealable under controlling law and Local Rule 79-5. Specifically, Exhibits C–G are confidential documents discussing Apple’s legal and business decisions regarding this litigation, its compliance with the Injunction in this lawsuit, and regulatory orders in other jurisdictions. Exhibit H contains excerpts from Apple’s privilege log prepared for the Special Masters conducting evaluation of the privilege claims stemming from Apple’s re-review. The privilege log is required to be filed under the terms of the Protocol, but contains competitively sensitive, non-public information regarding Apple’s project codenames and the engagement of outside legal counsel in connection with this litigation. It also contains personally identifiable information in the form of email addresses of Apple employees. Apple’s proposed redactions of Exhibit H are indicated in the redacted version of Exhibit H filed with this statement and itemized in the concurrently filed Declaration of Mark A. Perry (the “Perry Declaration”).

## LEGAL STANDARD

“The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,” including preventing the disclosure of information. *See Fed. R. Civ. P. 26(c)*. The Court has “broad latitude” “to prevent disclosure of materials for many types of information, including, *but not limited to*, trade secrets or other confidential research, development, or confidential information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (emphasis in original); *see also Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (compelling circumstances exist to seal potential release of trade secrets) (citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)); *PQ Labs, Inc. v. Qi*, 2014 WL 4617216, at \*1 (N.D. Cal. Sept. 15, 2014) (granting multiple motions to seal where publication would lead to the disclosure of trade secrets); *Apple Inc. v. Rivos, Inc.*, 2024 WL 1204115, at \*1 (N.D. Cal. Mar. 21, 2024) (granting request to seal “internal product codenames” and noting that a prior request for the same had

1 also been granted). Courts often find good cause exists to seal personally identifiable information. *See,*  
 2 *e.g.*, *Snapkeys, Ltd. v. Google LLC*, 2021 WL1951250, at \*3 (N.D. Cal. May 14, 2021) (granting motion  
 3 to file under seal personally identifiable information, including email addresses and telephone numbers  
 4 of current and former employees).

5 Although a party must show compelling circumstances to seal information appended to  
 6 dispositive motions, the standard for non-dispositive motions is simply “good cause.” *In re Anthem, Inc.*  
 7 *Data Breach Litig.*, 2018 WL 3067783, at \*2 (N.D. Cal. Mar. 16, 2018); *Rembrandt Diagnostics, LP v.*  
 8 *Innovacon, Inc.*, 2018 WL 1001097, at \*1 (S.D. Cal. Feb. 21, 2018); *see DNA Genotek Inc. v. Spectrum*  
 9 *Sols., L.L.C.*, 2023 WL 4335734, at \*2 (S.D. Cal. May 10, 2023). In general, requests to seal information  
 10 should be narrowly tailored “to remove from public view only the material that is protected.” *Ervine v.*  
 11 *Warden*, 214 F. Supp. 3d 917, 919 (E.D. Cal. 2016); *Vineyard House, LLC v. Constellation Brands U.S.*  
 12 *Ops., Inc.*, 619 F. Supp. 3d 970, 972 n.2 (N.D. Cal. 2021) (Gonzalez Rogers, J.) (granting a motion to  
 13 seal “because the request is narrowly tailored and only includes confidential information”).

## 14 DISCUSSION

15 Apple seeks to seal the confidential business and legal information contained in Exhibits C–G,  
 16 and also seeks to seal the personally identifiable information and the sensitive business information  
 17 regarding project codenames and Apple’s engagement of certain outside counsel in Exhibit H. *See Perry*  
 18 *Decl.* ¶¶ 5–8.

19 The administrative motion to seal is subject to the “good cause” standard because it concerns  
 20 non-dispositive objections related to discovery. *See, e.g.*, *Kamakana*, 447 F.3d at 1179 (“[T]he public  
 21 has less of a need for access to court records attached only to non-dispositive motions because those  
 22 documents are often unrelated, or only tangentially related, to the underlying cause of action.”); *Lee v.*  
 23 *Great Am. Life Ins. Co.*, 2023 WL 8126850, at \*2 (C.D. Cal. Nov. 13, 2023) (“Matters concerning  
 24 discovery generally are considered nondispositive of the litigation” (quotation omitted)); *see also In re*  
 25 *Anthem, Inc. Data Breach Litig.*, 2018 WL 3067783, at \*2; *Rembrandt Diagnostics, LP*, 2018  
 26 WL1001097, at \*1; *Al Otro Lado, Inc. v. Wolf*, 2020 WL 5422784, at \*4 (S.D. Cal. Sept. 10, 2020).

27 Apple’s sealing request meets the good cause standard here. *Lamartina v. VMware, Inc.*, 2024  
 28 WL 3049450, at \*2 (N.D. Cal. June 17, 2024) (good cause to seal internal email communications). Apple

1 operates in an intensely competitive environment, and thus has taken extensive measures to protect the  
 2 confidentiality of its information. *See Perry Decl.* ¶ 3. Disclosure of the sealed information in Exhibit  
 3 C (draft notes for lawyers presenting to select members of the press regarding this litigation) would  
 4 reveal non-public information about Apple's assessment and analysis of the litigation beyond what was  
 5 shared with members of the press. *See id.* ¶ 5. Disclosure of the sealed information in Exhibits D and F  
 6 (documents addressing Apple's compliance efforts in this litigation) would reveal non-public  
 7 information about Apple's business and legal assessments of its Injunction compliance options and  
 8 efforts, and would provide an unfair advantage to Apple's competitive rivals. *See id.* ¶ 6. Disclosure of  
 9 the sealed information in Exhibits E and G (documents related to Apple's regulatory compliance plans  
 10 and analyses in the Netherlands and the European Union) would reveal sensitive, non-public information  
 11 regarding Apple's analysis of options for complying with new regulations and the commercial  
 12 implications of those various options. *See id.* ¶ 7; *see also DNA Genotek Inc.*, 2023 WL 4335734, at \*2  
 13 (finding good cause where disclosure would "undercut" a party's "position ... in the marketplace");  
 14 *Apple Inc.*, 2024 WL 1204115, at \*1. Disclosure of the sealed information in Exhibit H relating to the  
 15 confidential engagement of outside counsel and confidential project codenames could harm Apple's  
 16 business interests. *Perry Decl.* ¶ 8. Additionally, courts in this district have found not only good cause,  
 17 but compelling reasons exist to seal personally identifiable information. *See Snapkeys*, 2021 WL  
 18 1951250, at \*3 (granting motion to file under seal personally identifiable information, including email  
 19 addresses and telephone numbers of current and former employees); *see also UnifySCC v. Cody*, 2023  
 20 WL 7170265, at \*1 (N.D. Cal. Oct. 30, 2023) (finding compelling reasons to seal personally identifying  
 21 information of employees, including names, addresses, phone numbers, and email addresses).

22 Apple has narrowly tailored its sealing request to include only the information necessary to  
 23 protect its confidential business information and personally identifiable information. *See Krommenhock*  
 24 *v. Post Foods, LLC*, 2020 WL 2322993, at \*3 (N.D. Cal. May 11, 2020) (granting motion to seal  
 25 "limited" information); *see also Phillips*, 307 F.3d at 1211; *Williams v. Apple Inc.*, 2021 WL 2476916,  
 26 at \*2–3 (N.D. Cal. June 17, 2021) (noting Apple's narrowed sealing requests with "tailored redactions");  
 27 Dkt. No. 643 at 3 (finding Apple's proposed redactions appropriate for an exhibit when redactions were  
 28 "narrowly tailored" to "sensitive and confidential information"). Apple has only partially redacted

1 limited information in Exhibit H. *See* Perry Decl. ¶ 8. Redaction of Exhibits C–G is not practicable  
2 because the confidential information permeates the entirety of those documents.

3 For the foregoing reasons, there is good cause that warrants partially sealing the exhibits to Epic's  
4 Motion.

5 **CONCLUSION**

6 Apple respectfully requests that the Court seal the information identified in the accompanying  
7 declaration.

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9  
10 Dated: February 3, 2025

Respectfully submitted,

11 By: Mark A. Perry  
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14 Attorney for Apple Inc.  
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